

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary
Action against STEVEN T. APPELGET,
an Attorney at Law of the
State of Minnesota.

**PETITION FOR
DISCIPLINARY ACTION**

TO THE SUPREME COURT OF THE STATE OF MINNESOTA:

The Director of the Office of Lawyers Professional Responsibility, hereinafter Director, files this petition upon the parties' agreement pursuant to Rules 10(a) and 12(a), Rules on Lawyers Professional Responsibility. The Director alleges:

The above-named attorney, hereinafter respondent, was admitted to practice law in Minnesota on October 22, 1993. Respondent currently practices law in St. Paul, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

DISCIPLINARY HISTORY

1. Respondent's record of prior discipline, including warnings and admonitions, is as follows:

a. On May 27, 1997, respondent was issued an admonition for conduct in violation of Rules 1.3, 1.4, and 1.16(d), Minnesota Rules of Professional Conduct (MRPC).

b. On June 18, 1998, respondent was issued an admonition for conduct in violation of Rules 1.1, 1.3, and 1.4, MRPC.

FIRST COUNT

A. Soto Matter

1. On November 5, 1997, respondent agreed to represent Charlene Soto on a pro bono basis pursuant to a referral from the Minnesota AIDS Project (MAP). Soto required legal services in regard to a mortgage foreclosure action that had been commenced by Norwest Mortgage (Norwest) against her homestead.

2. On December 23, 1997, pursuant to respondent's recommendation, a Chapter 13 bankruptcy petition was filed on behalf of Soto, resulting in an automatic stay of the foreclosure proceedings.

3. Because the mortgage payments were not kept current after the filing of the bankruptcy petition, Norwest brought a motion before the bankruptcy court seeking a lift of the stay so they could proceed with the foreclosure.

4. On March 26, 1998, Norwest and Soto agreed that Norwest would accept payment of the post-petition arrearages and attorney fees and Soto would continue to pay her regular monthly mortgage payment beginning in April 1998. The agreement provided that, should Soto not make the required payments, Norwest could proceed ex parte to obtain an order lifting the stay.

5. Soto had, in February 1998, become eligible for a housing subsidy from the MAP Transitional Housing Program (THP). THP agreed to subsidize a portion of the monthly mortgage payment and Soto was required to pay the balance. In order to avoid confusion that might arise in sending two checks for one mortgage payment, respondent agreed to receive THP's and Soto's mortgage contributions and make one payment per month to Norwest.

6. Pursuant to this arrangement, respondent paid the April, May and June, 1998 mortgage payments to Norwest.

7. Despite the fact that respondent did receive funds for the mortgage payments from THP and Soto for the months of July, August, September and October 1998, he did not make the mortgage payments for those months.

8. On October 14, 1998, Norwest served a Notice of Default on respondent and Soto. The notice gave respondent and Soto until October 26, 1998, to remit \$2,689.44 in past due mortgage payments.

9. After receipt of the Notice of Default, respondent called Norwest attorney, Rebecca F. Schiller. Respondent told Schiller he had funds in his trust account to pay the arrearages. Schiller and respondent agreed upon an adjusted figure of \$2,215.83 in past due payments owed. Schiller agreed to an extended deadline of November 2, 1998.

10. Respondent did not pay the past due mortgage payments by November 2, 1998. Schiller called respondent and left a message extending the deadline to November 9, 1998. Respondent did not contact Schiller or pay the adjusted amount by November 9, 1998. Schiller again called respondent's office to inquire about the payment and again left a message extending the deadline, this time to November 12, 1998.

11. On November 13, 1998, Norwest applied to the court for an ex parte Order Terminating Stay. The court issued the ex parte Order Terminating Stay on November 13, 1998.

12. Also on November 13, 1998, Norwest received a letter and trust account check for \$2,204.44 from respondent. Norwest immediately responded via facsimile informing respondent that the deadline had passed and that Norwest had already applied for an ex parte Order Terminating Stay.

13. On December 9, 1998, Norwest served a Notice of Foreclosure Sale upon Soto.

14. On February 23, 1999, the bankruptcy court granted respondent's motion for a stay of foreclosure sale until March 11, 1999.

15. On March 9, 1999, respondent turned over Soto's file and a cashier's check for \$3,450.55 to a new attorney retained by Soto. The \$3,450.55 represented all funds held by respondent in trust for Soto.

16. Respondent's conduct in failing to timely remit Soto's mortgage payments violated Rules 1.3 and 1.15(b)(4), MRPC.

SECOND COUNT

B. Trust Account Matter

17. The Director audited respondent's trust account for the period September 1995 through March 1999 (audit period).

18. During the audit period, respondent maintained trust account no. 1-991-8004-0222 at First Bank, now known as US Bank.

19. During the audit period, respondent did not maintain all of the trust account books and records required by Rule 1.15, MRPC, and Lawyers Professional Responsibility Board (LPRB) Opinion No. 9. In particular, respondent did not maintain client subsidiary ledgers, trial balances or reconciliations.

20. During the audit period, respondent repeatedly disbursed funds from the trust account to or on behalf of clients before depositing funds to the account in support of the disbursements. This resulted in overall shortages in the trust account ranging from \$400 to \$3,000 throughout the audit period.

21. Respondent falsely certified on his 1996 through 1998 attorney registration statements that he was maintaining trust account books and records in accordance with Rule 1.15, MRPC, and LPRB Opinion No. 9.

22. Respondent's conduct in failing to keep required trust account books and records violated Rule 1.15, MRPC and LPRB Opinion No. 9. His conduct in falsely certifying to the court that he kept the required trust account books and records violated Rules 1.15(h) and 8.4(c), MRPC.

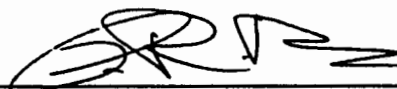
WHEREFORE, the Director respectfully prays for an order of this Court imposing appropriate discipline, awarding costs and disbursements pursuant to the Rules on Lawyers Professional Responsibility, and for such other, further or different relief as may be just and proper.

Dated: December 9, 1999.



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